

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PHAN HUE	:	CIVIL ACTION NO. 1:CV-01-1064
	:	
Plaintiff	:	(Judge Kane)
	:	(Magistrate Judge Smyser)
v.	:	
	:	
JAMES UPDIKE,	:	
JOSEPH MATALONI,	:	
EDWARD O'BRIAN and	:	
DALE HAZLAK	:	
	:	
Defendants	:	

ORDER

Before the court in the captioned action is a June 6, 2003 report of the magistrate judge recommending that the first motion for summary judgment filed by defendants Mataloni, O'Brian and Hazlak be granted and that the second motion for summary judgment filed by defendants Mataloni, O'Brian and Hazlak be denied as moot. It is also recommended that the action be dismissed without prejudice based on the plaintiff's failure to exhaust available administrative remedies prior to commencing this action and that the case file be closed. No timely objections have been filed.

Accordingly, upon review of the record and the applicable law, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Smyser.
- 2) The first Motion for Summary Judgment (Doc. No. 42) filed by Defendants Mataloni, O'Brian and Hazlak is **GRANTED** and that the second Motion for Summary

Judgment (Doc. No. 78) filed by defendants Mataloni, O'Brian and Hazlak is **DENIED** as moot.

3) The action is dismissed without prejudice based on the Plaintiff's failure to exhaust available administrative remedies prior to commencing this action.

3) The Clerk of Court shall close the file.

s/ Yvette Kane
YVETTE KANE
United States District Judge

Dated: June 25 , 2003.